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From:	European Economic and Social Committee (EESC)
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Subject:	Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council on the safety of toys and repealing Directive 2009/48/EC [COM(2023) 462 final – 2023/0290 (COD)] <sup>1</sup>

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Delegations will find attached the above document.

Encl.: INT/1014 Revision of the Toy Safety Directive.

<sup>1</sup>

Other language versions, will soon be available on the following website:  
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# OPINION

European Economic and Social Committee

## Revision of the Toy Safety Directive

Proposal for a regulation of the European Parliament and of the Council  
on the safety of toys and repealing Directive 2009/48/EC  
[COM(2023) 462 final – 2023/0290 (COD)]

**INT/1014**

Rapporteur: Tymoteusz Adam ZYCH

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Referral	European Parliament, 19/10/2023 Council of the European Union, 20/09/2023
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	23/11/2023
Adopted at plenary	13/12/2023
Plenary session No	583
Outcome of vote (for/against/abstentions)	158/1/1

## 1. Conclusions and recommendations

- 1.1 The EESC supports the Commission's initiative and considers it reasonable, necessary and proportionate overall. Children's safety cannot be compromised.
- 1.2 The proposed extension of generic bans, justified by scientific progress, is proportionate, as it would significantly reduce the number of accidents and diseases associated with toys that are caused by contact with harmful chemicals. Moreover, the proposal is a part of a wider EU chemical strategy and of legislation regarding other products (including childcare products).
- 1.3 Introducing a digital product passport can have an impact on customers' willingness to buy non-compliant toys and can help market surveillance and custom authorities distinguish between compliant and non-compliant toys. However, as the projected provisions can disproportionately negatively impact the market of traditional and personalised non-serial toys, the EESC suggests introducing dedicated measures to help the manufacturers of such toys.
- 1.4 The EESC invites the Commission to consider the potential threats to child safety that could be brought on by a possible increase in the market share of non-compliant toys as a result of higher toy prices. The risk can be balanced by efficient market surveillance, paying particular attention to the compliance of imported toys.

## 2. Introduction

- 2.1 The subject of this opinion is the European Commission's draft proposal for a regulation of the European Parliament and of the Council on the safety of toys and repealing Directive 2009/48/EC ("**toys regulation**" or "**the proposal**").
- 2.2 As set out in the explanatory memorandum, the toys regulation focuses on two main objectives: (1) improving safety for children against risks associated with harmful chemicals contained in toys; (2) enforcing measures in order to reduce the number of toys that are not compliant with EU law ("**non-compliant toys**").
- 2.3 It also states that the current legal regime, which is based on Directive 2009/48/EC<sup>1</sup> (the "**Toys Safety Directive**"), is not sufficient to solve the aforementioned issues.
- 2.4 As regards harmful chemicals, the explanatory memorandum indicates that the Toys Safety Directive does not refer to substances such as endocrine disruptors or those that affect the immune, nervous or respiratory systems. Meanwhile, the power given to the Commission to amend the Toys Directive and adapt it to scientific knowledge is too limited. In particular, it is not possible to adapt the Toys Safety Directive to limit values for toys intended for children older than 36 months.

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<sup>1</sup> Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys, OJ L 170, 30.6.2009, p. 1-37.

- 2.5 In this context, as indicated by the Commission, the key reason for extending generic bans is progress in scientific knowledge and the current awareness of the harmful effects of several chemicals contained in toys (even in those which are currently compliant). This approach is also coherent with wider EU policy, in particular the chemicals strategy for sustainability<sup>2</sup>.
- 2.6 Despite the extension of generic bans, the industry can apply for derogations permitting specific substances and mixtures indicating their permitted use in toys and new limit values for specific substances in toys. Derogations can be issued through Commission delegated acts, which have an *erga omnes* effect.
- 2.7 Regarding the reduction of the share of non-compliant toys on the EU market, the main measure proposed in toys regulation is a new digital product passport. The proposal does not provide new or wider regulatory measures in this respect – the core of the Toys Safety Directive provisions (included in the proposal) remains unchanged, with only slight adjustments. However, the toys regulation is proposed in the context of a particular existing regulatory framework, i.e. Regulation (EU) No. 2019/1020 on market surveillance<sup>3</sup>, Regulation (EU) 2022/2399<sup>4</sup> and Regulation (EU) 2023/988<sup>5</sup>. Further enforcement measures, as well as Member State obligations in this respect, are prescribed in that regulatory framework, which is outside of the scope of the present opinion.

### 3. General remarks

- 3.1 The EESC is aware of the sensitive nature of the subject matter of the proposal. Toys are essential for children's proper physical and mental development. On the other hand, toys can be unsafe and may lead to accidents that can even be fatal. Children are a vulnerable group and should be provided with increased protection measures, which is in the public interest. The EESC agrees that compromises in the matter of child safety should never be made despite the developmental advantages of toys, even if the necessary protection generates costs and administrative burdens. However, this does not mean that regulatory tests, such as proportionality or subsidiarity tests, do not apply. Some of the EESC's concerns in this respect will be discussed below (in sections 4-6). The EESC invites the Commission and EU institutions involved in the legislative process to take such concerns into consideration.
- 3.2 Progress in scientific knowledge regarding the harmfulness of several chemical substances that were once contained in toys could lead to a significant risk that Member States would try to

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<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Chemicals Strategy for Sustainability Towards a Toxic-Free Environment, 14 October 2020, COM/2020/667 final.

<sup>3</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011; [OJ L 169, 25.6.2019, p. 1](#).

<sup>4</sup> Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013; [OJ L 317, 9.12.2022, p. 1](#).

<sup>5</sup> Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC; [OJ L 135, 23.5.2023, p. 1](#).

impose additional requirements for toy manufacturers (procedure regulated by Art. 114 TFEU), which could divide the single market. The EESC is aware of this fact and welcomes the proposal as a justified regulatory measure safeguarding the safety of toys on the EU market and guaranteeing that toys which are compliant with EU laws are safe. The EESC praises the flexibility and general character of the toys regulation, which is necessary in case of further progress in scientific knowledge. This objective can be achieved mainly by delegated powers of the Commission under Art. 46.5 and Art. 46.8.

- 3.3 The digital product passport appears to be a proper measure that would enable consumers and market surveillance and custom authorities to distinguish between compliant and non-compliant toys. It would definitely improve safety and, to some extent, reduce the number of non-compliant toys on the market (subject to detailed comments below). Nevertheless, as the changes would incur costs for the industry<sup>6</sup>, the EESC invites the Commission to take seriously the need for the measures discussed below in point 6.9.
- 3.4 Besides the above, the EESC agrees with some of the stakeholders that the proposal might not be sufficient to reduce the number of non-compliant toys and potential threats to children's health connected with toys. Thus, the EESC invites the Commission to once again consider the scope of the proposal or extend it in the near future, in particular by defining online marketplaces as economic operators, by defining minimum levels of sanctions mentioned in Art. 52, and by introducing specific requirements to regulate noise levels (in a more detailed way than what is proposed in Annex II Part I par. 10). Moreover, as a precautionary principle is mentioned in the preamble to the proposal, it should also be added to the legal text of the toys regulation, similar to what is laid down in Art. 39 of the Toys Safety Directive.

#### **4. Proportionality of the extension of generic bans**

- 4.1 The EESC is aware that several stakeholders have raised arguments in the public debate, stating that the chemical substances which are subject to the proposed generic bans are contained not only in toys, but also in many other products with which children have contact on a daily basis. It has been argued that the regulation cannot eliminate threats to children's health by bringing disproportionate administrative burdens on one sector while ignoring the same threats in another. While the EESC agrees that the problem of chemical safety is not restricted to the regulation on toy manufacturing, it does not mean that the proposal in question fails to comply with the principle of proportionality.
- 4.2 Firstly, while the Committee is aware that many harmful substances are present in other products with which children have day-to-day contact, it does not mean that the proposal cannot achieve assumed goals. The main objective of the toys regulation is to ensure that toys that are compliant with EU law are safe for children. This means that the proposed measures aim to significantly reduce or even eliminate harmful accidents related to chemical substances contained in toys that children play with. It does not eliminate such risks in relation to any other product, as this is not the objective of the proposal. The toys regulation is proportionate in that a

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"The overall additional administrative burden of the introduction of the digital product passport has been estimated, based on current market structure and expected average production per enterprise, at approximately EUR 18 million one-off and EUR 10.5 million recurrent, per year", explanatory memorandum, p. 9.

significant number of accidents and diseases caused by contact with harmful chemicals is associated with toys, and the proposed measures would significantly reduce these.

- 4.3 Secondly, the proposal is a part of a wider EU chemical strategy and of legislation regarding other products (including childcare products) which is in the works<sup>7</sup>. The EESC believes that this background is crucial for considering possible proportionality and discriminatory charges against the proposal to be unjustified in this respect. However, the EESC notes that for that reason the toys regulation should rather be a part of a wider legislative package. The EESC therefore invites the Commission to consider combining the legislative process regarding the toys regulation with other proposed or projected pieces of legislation concerning harmful chemical substances in products. It is particularly important to build firm guarantees for the safety of childcare products other than toys.

## 5. Procedures for derogation

- 5.1 According to the proposal, depending on the production method or use of certain chemical substances (which fall within the scope of the generic bans), products may be allowed a derogation through Commission delegated acts. The procedure can be initiated by the manufacturer, who will be responsible for preparing an appropriate dossier (including results of scientific tests) and for applying for the derogation. Although the toys regulation does not prescribe any administrative fees for such an application, the cost per derogation request (understood as the cost of producing the dossier) could range between EUR 50 000 and EUR 150 000<sup>8</sup>.
- 5.2 Potential derogations would have an erga omnes effect, so other manufacturers would also benefit from them. However, as noted by stakeholders, derogation procedures are usually efforts by the whole industry, and so-called free-rider problem should not occur.
- 5.3 Several stakeholders have raised the argument that the extension of generic bans and the requirement to apply for new derogations are unnecessary additional administrative burdens that could increase the cost of toy production, and, consequently, of toy prices. The EESC does not consider this a valid argument, as the presence of harmful chemicals in toys cannot be accepted merely because of the possible cost reductions. The EESC endorses the Commission's position that children's safety cannot be compromised. Once there is scientific proof that a substance is harmful for children, prohibition of its use in toys isn't merely precautionary. It is rather a matter of proven scientific background. On the other hand, regulatory authorities cannot predict manufacturers' use of particular chemicals in toys. This is why it is reasonable to shift the burden of proof in this respect on manufacturers through the derogation procedure.

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<sup>7</sup> See the chemicals strategy for sustainability, p. 10: "The Commission will extend the generic approach to risk management to ensure that consumer products – including, among other things, food contact materials, toys, childcare articles, cosmetics, detergents, furniture and textiles – do not contain chemicals that cause cancers, gene mutations, affect the reproductive or the endocrine system, or are persistent and bioaccumulative. ... [The Commission will] ensure the safety of children from hazardous chemicals in childcare articles and other products for children (other than toys) to provide the same level of protection as in toys, through the mandatory legal requirements of the General Product Safety Directive and restrictions in REACH".

<sup>8</sup> Explanatory memorandum, p. 9.



- 5.4 The EESC believes that it will provide an additional incentive for manufacturers to improve toy safety, innovate new production methods and contemplate the use of particular chemicals in toys. There is, of course, an alternative: to prohibit the discussed chemicals without exceptions. However, it could lead to significant distortions to the market. The chosen regulatory measures are therefore reasonable and proportionate in the EESC's view.

## 6. **Digital product passport**

- 6.1 The declared objective of introducing a digital product passport is to reduce the number of non-compliant toys on the EU market. As the Commission explains, it is a measure for enforcing the toys regulation requirements.
- 6.2 The EESC finds this argument to be only partially justified. It needs to be highlighted that the proposal lays down limited provisions regarding the enforcement of its requirements. In the EESC's view, the market presence of products that are not compliant with legal requirements is usually the result of two factors: (i) a lack of proper enforcement or insufficient market surveillance; and (ii) people's willingness to buy non-compliant products, usually spurred by price differences between compliant and non-compliant products or a lack of awareness regarding non-compliance.
- 6.3 As highlighted in the impact assessment report<sup>9</sup>, "[d]ata on the period 2016- May 2022 reveals that 43% of the toys subject to in depth inspections were found to be non-compliant and more than half of these relate to substantive safety risks" and "[t]he value of the non-compliant toys market has been estimated for 2019 to span from EUR 248 million to EUR 1.65 billion<sup>10</sup>". This means that the market share of non-compliant toys is very high, possibly nearly half of the whole market. However, this status relates to compliance with the requirements that are currently in force (based on the Toys Safety Directive), so tightening these can only worsen the situation. It can be balanced (or improved), however, by better market surveillance or by curbing customers' willingness to buy non-compliant toys.
- 6.4 As stated before, the proposal provides a very limited scope of new (compared to previous legislation) regulatory measures in the area of market surveillance. Such measures are rather prescribed in other pieces of the EU legislation that are not the subject of this opinion. Moreover, as the Commission explains, generally there are no problems regarding the Member States' competent authorities conducting market surveillance. Thus, in this respect, the proposal does not bring any new added value and cannot achieve the declared objective.
- 6.5 On the other hand, the new requirements would increase the costs of toy manufacturing and, consequently, result in price increases. It is difficult to compare prices of compliant and non-compliant toys, as such products are often not comparable in many aspects, not only because of their features but also because of market brands – branded products usually follow legal requirements and are more expensive. However, there is always a substitution effect between products that can spur customers' willingness to buy cheaper products, whether they be

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<sup>9</sup> Commission staff working document impact assessment report, SWD(2023) 269 final, p. 16.

<sup>10</sup> Commission staff working document impact assessment report, SWD(2023) 269 final, p. 17.



compliant or not. In this context, income gaps between members of society (and between societies), and the fact that every child needs toys for proper physical and mental development, can result in increased market shares of non-compliant toys once prices of compliant toys go up. Nevertheless, submitted documents do not include sufficient data in this respect, particularly regarding how much price increases affect customer choices.

- 6.6 Thus, introducing a digital product passport cannot balance (or at least, it has not been sufficiently proven that it can balance) the above-mentioned price difference and the consequences thereof. However, the proposed measure can have an impact on customers' willingness to buy non-compliant toys, and help market surveillance and custom authorities to distinguish between compliant and non-compliant toys.
- 6.7 For these reasons the EESC does not believe that the measure in question will significantly decrease the number of non-compliant toys on the EU market, meaning that the proposal's second objective can only be achieved to a limited extent.
- 6.8 Nevertheless, it does not change the EESC's overall positive assessment of the proposed toys regulation, as improving the safety of products is sufficient justification for the proposed measures. Child safety cannot be compromised and weakened by market analysis. However, the EESC invites the Commission to consider potential threats to child safety caused by the potential increase in the market share of non-compliant toys, and possible further measures to balance this risk.
- 6.9 The EESC notes that introducing a digital product passport can disproportionately negatively impact the market of traditional and personalised non-serial toys (produced by local micro-entrepreneurs, artists and craftsmen), which bear particular educational and cultural value for children and society as a whole. While the difficulties in question cannot justify a general derogation of the obligations laid down in the proposal for this group, there should be further analyses on how to reduce the costs that these entrepreneurs will bear. The EESC suggests considering introducing possible measures to help them, in particular a special digital passport authorisation procedure for manufacturers of personalised non-serial toys, as well as setting up a simple public online application and server that can provide micro-manufacturers with basic functions necessary to establish digital product passports for products they manufacture.

## **7. Other comments and minor discrepancies**

- 7.1 Please note that Art. 3(7) of the proposal refers to Art. 2(11) of Regulation (EU) 2019/1020, however no such provision exists. It should be Art. 3(11).
- 7.2 Regarding Art. 37, the EESC suggests more accurate wording, e.g. "Member States shall ensure that a transparent and accessible appeals procedure against decisions of the notified bodies is available".
- 7.3 The EESC also invites the Commission to consider amending Art. 54 par. 1 by removing the maximum deadline for toys placed on the market in conformity with the Toys Safety Directive to continue to be made available on the market. Given that the market life cycle varies from

product to product (also taking into account seasonal sales), and it is unlikely that manufacturers would place extra supplies of their products on the market during the transitional period, the proposed wording of Art. 54 par. 1 seems to be unreasonable.

Brussels, 13 December 2023.

Oliver Röpke

The president of the European Economic and Social Committee

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